23 June 2017: Health care institutions sector

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The *Autorité de la concurrence* clears the acquisition of MédiPôle-Partenaires by Elsan, subject to conditions

A transaction referred by the European Commission

On 31 January 2017, the European Commission referred to the *Autorité de la concurrence* the review of the acquisition by Elsan, France's second largest private clinics group, of MédiPôle-Partenaires (MPP), the third largest group.

This referral procedure, used relatively rarely, allows the European Commission, which normally has competence to examine an acquisition on the basis of its scale and European dimension, to refer a case back to the national authority when the national authority – in this case the *Autorité de la concurrence* – is better placed to examine the acquisition's effects on national markets.

The referral to the French *Autorité* was particularly timely in this case because it enabled the Autorité to examine the effects of mergers in the private clinics sector from a new perspective. For the first time in France, the *Autorité de la concurrence* examined whether this acquisition, which cannot affect the prices of medical services subject to mandatory pricing, could have a negative impact on prices of non-medical ancillary services (private room supplement, board and accommodation of companions, television, telephone, exceptional services) or lead to a poorer quality medical care offering for patients.

This review of the non-pricing effects of concentrations is not without precedent. In other sectors (retail[1], press[2] and media[3]), the *Autorité* took account in particular of the risk of a reduction in diversity and pluralism

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Parties to the operation

By bringing together 109 institutions (Elsan: 68; MPP: 41) within the same entity, the acquisition leads to the creation of a private clinic group on a par with the sector leader, Ramsay Générale de santé (RGDS).

The Elsan group notified the *Autorité* of the acquisition on 7 April 2017, following a period of dialogue with the *Autorité*'s Investigation Services (prenotification). The decision issued today is the *Autorité*'s first decision identifying risks to the quality of the healthcare service offering and risks of price rises for ancillary services (private room supplement, board and accommodation of companions, television, telephone, exceptional services) associated with the ownership of multiple health care institutions in the same geographical area.

Methods used to analyse the acquisition's effects on the healthcare sector

The *Autorité* examined the effects of this acquisition on the treatments and diagnostic services offering in which both publicly-owned hospitals and clinics are both active.

The effects of the acquisition were first examined in each major medical category: medicine, surgery, obstetrics, neonatology, psychiatry, follow-up care and rehabilitation, long-term care, oncology, diagnostics, emergency care, and resuscitation.
To take account of the specialisation of practitioners and the variety of hospital treatments for which, from the patient's point of view, there is no substitute, the *Autorité* also examined the parties' positions in the twenty-three major diagnostic categories (including, in particular, disorders of the eyes; the ears, nose, throat, mouth and teeth; the respiratory system; the circulatory system; the digestive tract, etc.).

The *Autorité* also examined the effects of the acquisition on healthcare at home and on cosmetic (elective) surgery.

A risk of reduced diversity in the healthcare service offering available to patients and an increase in the price of services not covered by health insurance

A broad consultation of stakeholders in the market (regulatory authorities, public and private competitors, health and mutual insurance bodies) has been conducted as part of the review of this acquisition.

In the *départements* of Puy-de-Dôme, Lot-et-Garonne and Tarn, the acquisition significantly strengthens the new group's position, most notably in surgery, particularly in many major diagnostic categories.

The *Autorité* considered that if Elsan's position was strengthened in the geographical areas concerned, in a significant number of healthcare categories, this could affect patients' well-being by reducing their freedom of choice and the quality of the healthcare offering available.

Furthermore, the investigation could not rule out the identified risk of an increase in the price of ancillary services, which would be borne by the patient.

Commitments proposed by Elsan

In order to address these concerns, Elsan made a commitment to divest three health care institutions to a competitor.

- one institution in Puy-de-Dôme, chosen by Elsan from the three ultimately owned by the new entity in Puy-de-Dôme (the La Plaine clinic, the Châtaigneraie clinic, the Pôle santé République clinic);

- one institution in Lot-et-Garonne: at Elsan's choice this could either be Elsan's stake in the Pôle de Santé du Villeneuvois, or the Esquirol-Saint-Hilaire clinic;

- the Toulouse-Lautrec clinic in Tarn.

The divestiture of these three institutions to one or more competitor healthcare groups either eliminates the activity overlap resulting from the acquisition in these three départements, or reduces the new entity's position in healthcare and diagnostic clinics, thus guaranteeing alternative healthcare service offerings for patients.

Elsan also committed to the fact that the transaction would not hinder the freedom of exercise of the doctors who work both in its clinics and in the ones of competing groups.

All these commitments will be monitored by an independent monitoring trustee approved by the *Autorité*.

Reasons for the *Autorité*'s decision to clear the acquisition subject to commitments

When the *Autorité* considers that a concentration is likely to have an anticompetitive effect on competition, the parties have the option of proposing commitments, at any point in the examination, to address the competition problems identified by the *Autorité*. If the proposed commitments are considered by the *Autorité* to be sufficient to address the competition concerns, the *Autorité* may clear the acquisition in the first phase without the need to open an in-depth examination (at the end of which, the *Autorité*'s Board can make the decision to clear the acquisition, to clear it subject to commitments, or to block it if no remedy can be found that makes the acquisition compatible with competition).

In the present case, the *Autorité* considered that the commitments proposed by Elsan were sufficient for the acquisition to be cleared at the end of an initial examination phase.

Divestiture does not mean closure of the institution but its take-over by a competitor group

The required divestitures are justified by the disappearance of local "competitive pressure" on the new entity after the acquisition.

Their purpose is to maintain competition and the diversity of the healthcare offering available to patients in the area concerned.

[1]Decision 13-DCC-90 of 11 July 2013 on the acquisition of sole control of Monoprix by Casino Guichard-Perrachon and Decision 16-DCC-111 of 27 July 2016 on the acquisition of sole control of Darty by Fnac.
[2]Decision 13-DCC-46 of 16 April 2013 on the acquisition of sole control by the Rossel group of the companies in the Pôle « Champagne Ardennes Picardie » belonging to the Hersant Média group.
[3]Decision 12-DCC-100 of 23 July 2012 on the acquisition of sole control of TPS and CanalSatellite by Vivendi and Groupe Canal Plus.

> See the full text of the decision 17-DCC-95

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